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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re B.H., a Person Coming Under the
Juvenile Court Law.

B206814

(Los Angeles County
Super. Ct. No. CK68411)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.H.,

Defendant and Appellant;

R.M.,

Respondent.

APPEAL from an order of the Superior Court of Los Angeles County,
Marily Mordetzy, Referee. Affirmed.

No appearance for Plaintiff and Respondent.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and
Appellant.

John L. Dodd, under appointment by the Court of Appeal, for Respondent.

D.H. appeals from the trial court's order granting sole legal custody of her son B.H. to his presumed father. Because the court did not abuse its discretion, we affirm.

FACTS

B.H. is an eight-year-old autistic boy. His mother, D.H., and his half-sister (who turned eighteen while this appeal was pending) fought continually, and the police responded to the home five times in the summer of 2007. On June 6, 2007, a sheriff's deputy took B.H.'s half-sister into protective custody on a physical abuse allegation. The Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code section 300 on June 11, 2007 on behalf of both children. B.H. (the subject of this appeal) remained with D.H., while his half-sister was placed in foster care.

B.H.'s presumed father, R.M. (Father), and D.H. were at the hearing on June 11, 2007, although B.H. was not. The court continued the hearing to the next day so that B.H. could be present. When the hearing resumed, DCFS recommended that B.H. be placed with Father, because the day before, the highway patrol had found B.H. wandering on the freeway looking for lizards. It was his sixth runaway. B.H. was released to the care of Father.

DCFS filed its jurisdiction report on July 18, 2007. Father told the social worker that when he lived with D.H. he was her "target of aggression," and that after he left, D.H. would attack her daughter. He was afraid B.H. would now be the target of her rage, and thought she "absolutely has mental health issues." The regional center caregiver appointed for B.H. said that his behavior had improved greatly since he had been with Father, who knew how to help B.H. control his frustrations. The regional center social worker reported that B.H. had many behavioral problems and flew into rages, and that although she had repeatedly urged D.H. to undergo specialized parenting training, D.H. had never done so. She recommended that Father take the classes. The family had first come to DCFS's attention in 1998 for allegations of general neglect and lack of supervision by D.H., who was very annoyed by the repeated interventions (six). Father

asked for primary physical custody, wanted D.H. to get help to control her anger so she could parent B.H., and requested a behavioral specialist from the regional center in his home on a regular basis to help B.H.

At the July 18 hearing, the court ordered B.H. placed in Father's home, ordered both Father and D.H. to complete a class on parenting autistic children, and gave D.H. a minimum of six hours monitored visitation each week with B.H. and nightly telephone calls. D.H. was meeting with a psychologist. The court also ordered that D.H. undergo a psychological evaluation under Evidence Code section 730.

At a hearing on September 12, D.H.'s counsel reported that D.H. claimed B.H. told her that Father had hit him, leaving a red mark on his face. D.H. wanted B.H. to be removed from Father's care. She had taken a tape recorder with her to a visit with B.H. and recorded his account, and counsel requested that the court listen to the tape. Father's counsel stated that Father vigorously denied hitting B.H. DCFS had come out to Father's home and B.H. had denied that Father had hit him. The court ordered further investigation by DCFS.

The psychological evaluation of D.H., dated October 22, 2007, reported "attitudinal problems" but no serious mental disorder.

D.H. again asked that B.H. be placed with her at a hearing on December 4, 2007. The court recommended that DCFS listen to the tape and ordered unmonitored visitation for D.H. because the psychological evaluation was positive, although the court voiced concerns about her behavior.

A status review report dated January 24, 2008 noted that "[d]uring this period of supervision, [B.H.] has shown dramatic improvement in his behavior and has been growing and developing appropriately," that Father maintained a clean and appropriate home environment, and that B.H. had also shown a dramatic improvement at school, with far fewer absences or tardies than when he lived with D.H. Father had completed the parenting program ordered by the court. He requested "full custody of my child, since he is doing much better with me." B.H. stated, "I want to stay with my father. Because my

mother continues to freak out, until she does not stop freaking out, I don't want to stay with her."

D.H. had been defiant and noncommunicative with the social worker, and had stopped seeing the psychologist. She had also accused Father of being a child molester and pedophile, although he denied any abuse, "none of the allegations were supported with any evidence or a concrete plausible cause," and the social worker had seen no evidence of abuse. D.H. had yet to provide the tape recording of B.H. to DCFS. After an unmonitored visit with B.H. on December 29, 2007, D.H. did not return the child to Father until January 6, 2008, in violation of the visitation orders.

At a hearing on January 24, D.H. brought the tape with her. The court ordered that DCFS provide a report on the tape and that exchange for future visitation by D.H. take place at the police department. The court continued the matter for a contested hearing.

In an interim review report dated February 27, 2008, the social worker summarized the tape as a compilation of several days of interactions between B.H. and D.H. Much was unrelated to the abuse allegations. D.H. did ask B.H. if Father was "mean to him" and B.H. said no, although he stated that Father "tells him mean things, which make [B.H.] mad." B.H. said that Father once locked him in a bathroom with the light off as discipline and that he "smacks him sometimes." While DCFS was concerned about the tapes, the social worker investigated several times and found no evidence or statements by B.H. about abuse, and B.H.'s daily caregiver from the regional center, a mandated reporter, never reported any abuse. DCFS told D.H. to report any abuse to the child abuse hotline, but she never did, and D.H. failed to attend a meeting set up with Father and B.H. to discuss the abuse allegations. DCFS recommended the court terminate jurisdiction and award sole physical custody to Father and joint legal custody to D.H. and Father, with unmonitored visitation for D.H.

The contested hearing took place on March 6, 2008. The court granted sole legal and physical custody to Father, with unmonitored visits for D.H. D.H. had not appeared with the tape the Friday before as she had promised, and although her counsel called her, D.H. did not appear at the hearing. The court stated, "The child is doing very well in the

home of the Father [¶] I'm going to order sole legal custody to Father. I don't believe the Mother and Father get along well enough to justify joint legal custody. And, furthermore, I have a lot of concerns about the behavior of the Mother that I witnessed while this case has been pending in this court. [¶] So sole legal custody to Father. [¶] Mother may have unmonitored day visits." When D.H.'s counsel objected, the court responded, "Counsel, it was set for contest. She did not appear. I'm not bound by the Department's recommendation." The court filed an order granting Father sole physical and legal custody on March 7, 2008.

D.H. appeals from the court's award of sole legal custody of B.H. to Father.

ANALYSIS

D.H. argues that the juvenile court abused its discretion in awarding Father sole legal custody, urging us that the Family Code strongly encourages trial courts to make orders that allow parents to share the rights and responsibilities of raising children. But the juvenile court does not have the same purpose as a family law court. "Family court" refers to superior court judicial officers who handle civil litigation arising under the Family Code; "juvenile court" is a superior court exercising jurisdiction that arises under juvenile law, with special rules governed by the Welfare and Institutions Code. (*In re Chantal S.* (1996) 13 Cal.4th 196, 200-201.) "The family court is established to provide parents a forum in which to resolve, inter alia, private issues relating to the custody of and visitation with children. In that setting, parents are presumed to be fit and capable of raising their children. (Fam. Code, § 3061.) The juvenile court, by contrast, provides the state a forum to 'restrict parental behavior regarding children, . . . and . . . to remove children from the custody of their parents or guardians.' [Citation.] When, as in this matter, a juvenile court hears a dependency case under section 300 of the Welfare and Institutions Code, the court deals with children who have been seriously abused, abandoned, or neglected. The juvenile court has a special responsibility to the child as *parens patriae* and must look to the totality of a child's circumstances when making decisions regarding the child. [Citation.] Accordingly, although both courts focus on the

best interests of the child, ‘[t]he presumption of parental fitness that underlies custody law in the family court . . . does not apply to dependency cases’ decided in the juvenile court. (*In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.)” (*Id.* at p. 201.)

In *Jennifer R.*, the court of appeal held that the then-existing family law presumption in favor of joint custody¹ as in the best interests of the minor did not apply in juvenile court, because it “has been intimately involved in the protection of the child, [and] is best situated to make custody determinations based on the best interests of the child without any preferences or presumptions.” (*In re Jennifer R., supra*, 14 Cal.App.4th at p. 712.) The mother challenged the court’s grant of sole legal custody to the father, contending — as does D.H. — that the evidence in the record did not suggest that she should be denied joint legal custody. The court of appeal affirmed, pointing to evidence in the record that the mother was unable to care for herself and her children, did not progress in overcoming the problems that led to removal, and was inconsistent and inappropriate in her visitation, as well as a doctor’s report showing emotional disturbance and learning disabilities. (*Id.* at p. 713.)

The evidence in D.H.’s case shows that she was prone to anger and aggression; she was unable to control or supervise B.H., who ran away repeatedly and was found “looking for lizards” on the freeway; B.H. was often absent from school or tardy while living in her home; she failed to undergo specialized parenting training for parents of autistic children, although repeatedly urged to do so; she did not communicate with the social worker; she made unsupported accusations of sexual and physical abuse against Father; and she did not attend important meetings or show up at court hearings. In contrast, Father completed the specialized parenting training; got B.H. to school regularly and on time; attended all important meetings and hearings; and requested and welcomed help from the regional center to supervise and care for B.H. and to help with his

¹ Current Family Code section 3040 provides that there is no presumption in favor of joint legal custody. (See *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 34.)

behavioral issues. Substantial evidence supported the court's conclusion that Father was better equipped to handle decisions about B.H.'s welfare. There was no abuse of discretion in awarding Father sole legal custody.

DISPOSITION

The juvenile court order dated March 7, 2008 is affirmed.

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WEISBERG, J.*

We concur:

MALLANO, P.J.

ROTHSCHILD, J.

*Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

